



May 13, 1999

Mr. David Anderson
Chief Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR99-1318

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126079.

The Texas Education Agency (the "agency") received a request for complaints against Sears Driving School for the years 1997 through 1999 and related information. You seek to withhold a portion of the complaint information under the informer's privilege aspect of section 552.101 of the Government Code.

Section 552.101 also protects, *inter alia*, information made confidential by judicial decision. The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

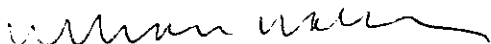
What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988); 191 (1978). Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285, 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988); 391 (1983). The privilege does not apply ordinarily to employees "reporting" to their employers about the job performance of other employees. *See* Open Records Decision No. 515. The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978).

You advise that the complaints at issue relate to alleged violations of article 4413(29c), V.T.C.S., the Texas Driver and Safety Education Act (the "act"). The agency enforces the act. *Id.* §4. *See also id.* § 27 (penalties for violations of act). You have marked information in the requested records which you say identifies the individuals who made the complaints and which you seek to withhold under the informer's privilege. Having reviewed your arguments and the records issue, we conclude that you may withhold the information you have marked under the informer's privilege aspect of section 552.101 of the Government Code. You must release the rest of the requested information which is held by the agency.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

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encl. Submitted documents

cc: Mr. Don Archer
210 Wellwood Lane
Conroe, Texas 77304
(w/o enclosures)